IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6815 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABHIBEN RAJA - Petitioner(s)
Versus
SAGANBHAI NAGNABHAI KHUTI & 1 - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
None for Respondent(s) : 1,
MR ARUN H MEHTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/07/2007

ORAL JUDGMENT

Ms. Sejal K. Mandavia, learned counsel for the petitioners; none for the respondent no.1; Shri

Arun Mehta, learned counsel for the respondent no.2.

2. Successors and legal representatives of the workman, being aggrieved by the order dated 14.9.95 passed by the Ex-Officio Commissioner under Workman Compensation and Presiding Officer, Labour Court, Jamnagar in Workman Compensation Fatal Case No. 66/93, are before this Court with a submission that in accordance with Section 4A of the Workmen's Compensation Act, 1923, despite their entitlement to get interest and penalty, the learned Court below was absolutely unjustified in not awarding the same in favour of the petitioners.

3. It is to be noted that against the said award/order, the petitioners preferred Regular First Appeal with payment of Rs.3100/- as court fees, however, after finding that the appeal under Section 30 of the Act may not be maintainable, they requested the Court for conversion of the matter into a petition under Article 227 of the Constitution of India. The prayer was allowed on 12.9.96 and the matter

came to be registered as Special Civil Application. After going through the entire records available with the Court and after hearing the parties, I am unable to hold that the Court below was unjustified in holding that there was any delay on the pat of the owner/employer or the Insurance Company, specially when the petitioners could not prove by cogent, reliable and clinching evidence that immediately after the death of the workman, the petitioners required owner or the Insurance Company to make payment of the compensation. In absence of the evidence in favour of the petitioners, findings recorded by the learned Court below cannot be condemned as perverse. In a petition under Article 227 of the Constitution, a finding recorded by the Court below would not be disturbed or set aside if the finding is reasonable and is a result of one of the possible views.

4. I find no reason to interfere in the matter. The petition is dismissed.

5. As the appeal filed by the petitioners was not

maintainable and they were permitted to convert the appeal into a petition under Article 227 of the Constitution, the court fee in excess of the required, deserves to be refunded to the petitioners. I am told that in the year 1995, the court fees required to be paid on a petition under Article 227 of the Constitution was Rs.50/- only. If that be so, the petitioners would be entitled to a certificate for refund of the court fees for an amount of Rs. 3050/-. Registry of this Court is hereby directed to issue a certificate of refund directing the Collector, Ahmedabad to pay the amount of Rs. 3050/- [Rupees Three Thousand Fifty only] to the petitioners on submission of the refund certificate.

6. On the merits, the petition is dismissed but however with the aforesaid directions. Rule is discharged accordingly. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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